

Date of decision: 14.3.96

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J
(14.3.96)

Mr. K. H. Bhaya for the petitioner.

C.A.V. JUDGMENT:

Heard the learned counsel for the petitioner. The order dated 22-1-1996 in which name of the petitioner stands at serial No.66 has been challenged in the present petition. Under the said order dated 22-1-1996 the petitioner has been ordered to be transferred to S.R.P. Group 12 at Gandhinagar from Gram Rakshak Dal (G.R.D.) in Sabarkantha District at Himatnagar.

2. Learned counsel for the petitioner has made two-fold contentions. Firstly he has contended that the order of transfer of the petitioner is made in violation of Rule 154 of the Gujarat Police Manual 1975. It is not the case of the petitioner that the Gujarat Police Manual is framed under some statute. I have gone through the provisions of Rule 154 of the Gujarat Police Manual. This rule contains instructions regarding transfer. Learned counsel for the petitioner stated that sub-rule (2) has been violated in making the transfer of the petitioner as he has not completed five years at the place from where he has been ordered to be transferred. Leaving apart the question of violation of the rule, the instructions contained therein do not give any legally enforceable right to the petitioner. I have gone through sub-rule (2) of Rule 154 which provides that as far as possible the officers should be kept at one station at least for five years. Under order annexure-A dated 22-1-1996 not only the petitioner has been transferred, but as many as 66 persons have been transferred. In view of these facts, if the transfer of the petitioner is made before completion of five years at a particular place, it cannot be said to be illegal. It is for the authority concerned to consider such questions. The very phrase "as far as possible" gives very wide discretion to the authority and as such on this ground no illegality can be said to be committed by the respondents in passing the order of transfer. The petitioner was posted at Himatnagar on 28th December, 1992. After four years, in case the petitioner is transferred, it cannot be said to be substantial breach of sub-rule(2) of Rule 154.

3. The next contention raised by the learned counsel for the petitioner is that clause (g) of Rule 3 provides that normally large-scale transfer should be avoided in the middle of the school term and transfer should be made as far as possible in October or April of the year, except under unavoidable circumstances and in exceptional cases. Learned counsel for the petitioner contended that the petitioner's son is studying in 10th standard and his two daughters are studying in 8th and 4th standards respectively. Though the petitioner's counsel is correct in contending that mid term transfer may cause some inconvenience, the rule on which

reliance has been placed is administrative in character and it permits the respondents to make such transfer. It is a case of transfer of 66 officers and as such in large scale transfer it cannot be said that midterm transfer has not to be made. The petitioner has been transferred from Himatnagar to Gandhinagar. He may continue his family at Himatnagar for a few months because the examinations are not far off. Strictly it cannot be said to be a mid term transfer. In view of these facts I do not find any infirmity with the order of transfer on this count.

4. The next contention raised by the learned counsel for the petitioner that the transfer is made without the consent of the petitioner is devoid of any substance. From the facts which have been stated in para 4 of the petition it gives out that the petitioner has joined the Gujarat Police Force as Armed Police Constable at Bharuch District in the year 1972. Thereafter he was promoted as Armed Head Constable in the year 1979 and on 15-5-1983 he was promoted as Armed Police Sub Inspector and posted to State Reserve Police Force, Group No.IX, Vadodara. Thereafter in the year 1993 the petitioner was transferred to the present post of Police Sub Inspector, Gram Rakshak Dal, Himatnagar. The petitioner has come from State Reserve Police Force. He was promoted as Armed Police Sub Inspector in the State Reserve Police Force. Thereafter he was transferred to Gram Rakshak Dal, Himatnagar. The petitioner is now sent back to the State Reserve Police Force. Therefore I fail to see why he should have made grievance if his consent was not taken. It is a case where the petitioner has been restored to State Reserve Police. In case without consent the transfer was not permissible, the learned counsel for the petitioner has failed to point out any statutory rules in respect thereof. In view of these facts the contention raised by the learned counsel for the petitioner that consent is necessary for transfer is devoid of any force.

5. It is true that transfer may cause some inconvenience. But on this ground alone this Court cannot interfere with the order of transfer. The Supreme Court in the case of Union of India vs. S.L. Abbas, reported in 1993(3) JT SC 678 has laid down that this Court has no power of for judicial review of the order of transfer except where it is a case of mala fide exercise of powers or the order has been made in violation of some statutory rules. It is not the case of the petitioner that the order is made in mala fide exercise of power. Learned counsel for the petitioner has failed to make out any case of violation of statutory rules. The Supreme Court in the case of S.L.Abbas (supra) further held that a transfer order made in violation of some transfer policy will not give any legally

enforceable right to the petitioner. The Supreme Court in the case of State of Punjab vs. Joginder Singh Dhatt, reported in JT 1993 (Suppl.) SC 485 held that if inconvenience is caused due to midterm transfer it will not give any legally enforceable right to the concerned employee. From the facts stated by the petitioner in the present writ petition it is clear that transfers are permissible from State Reserve Police Force to Gram Rakshak Dal and vice versa.

6. In the result the writ petition fails and the same is dismissed. No order as to costs.